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# Supreme Court of the United States

**October Term, 1955.**

No. 171

LESTER E. WOOLSEY, *Petitioner,*

*vs.*

UNITED STATES OF AMERICA.

## PETITION FOR A WRIT OF CERTIORARI.

ROYAL D. WOOLSEY,
*Attorney for Petitioner,*
Canastota, N. Y.

JAMES O. MOORE, JR.,
Genesee Building,
Buffalo, N. Y.

THE REPORTER COMPANY, INC., Walton, N. Y.—1956

# Supreme Court of the United States

LESTER E. WOOLSEY

vs.

UNITED STATES OF AMERICA.

## Petition for Certiorari.

The Petitioner, Plaintiff-Appellant, Lester E. Woolsey, feeling himself aggrieved by the decision of the Court of Appeals for the Second Circuit, which decision affirmed the decision of the Trial Court for the Northern District of New York, dismissing plaintiff's complaint, and in which decision the Court of Appeals adopted the opinion of the Trial Court, hereby prays for an appeal to the Supreme Court of the United States from such decision, entered on the 28th day of March, 1956. Said petition for appeal is made pursuant to the Laws of the United States and the revised rules of the Supreme Court of the United States, and in particular Part V, paragraph 23, of said rules. Said petition is based upon facts known by petitioner and upon information and belief as to interpretation of the laws applicable thereto.

(a) The only previous opinion in this case is that of the District Court, affirmed by the United States Court of Appeals for the Second Circuit, as shown by a copy of the decision as found in (b) (1) following.

(b) The grounds on which the jurisdiction of this Court is invoked are as follows:

(i) The following is a copy of the decision of the United States Court of Appeals for the Second Circuit.

UNITED STATES COURT OF APPEALS,

FOR THE SECOND CIRCUIT.

No. 247—October Term, 1955.

(Argued March 15, 1956 Decided March 28, 1956.)

Docket No. 23906.

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LESTER E. WOOLSEY,
Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA,
Defendant-Appellee.

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Before:

Frank, Lumbard and Waterman,
Circuit Judges.

Appeal from the United States District Court for the Northern District of New York, Foley, Judge. Affirmed.

Royal D. Woolsey (Canastota, New York), attorney for plaintiff-appellant.

Charles K. Rice, Acting Assistant Attorney General, Lee A. Jackson, A. F. Prescott, Morton K. Rothschild (Washington 25, D. C.), attorneys for the defendant-appellee.

*Per Curiam:*

The decision of the District Court is affirmed on the opinion of Judge Foley.

(ii) No hearing or extension of time yet requested.

(iii) Jurisdiction of this Court is conferred by the following Laws:

a. Constitution of the United States, Article III, Paragraph 2. "Original and appellate jurisdiction of Supreme Court. * * * In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make."

b. Title 28, U. S. Code, Section 1254. "Cases in the Courts of Appeals may be reviewed by the Supreme Court by the following methods; (1) By writ of Certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;"

c. Rules of this Court.

(e) The questions presented for review are as follows:

1. Does a credit on a donor's ledger, intended as a gift and accepted by donees as such, create any legal liability on the part of the donor, or grant to donees any property rights as against the donor?

The opinion of the Trial Court, adopted by the Appellate Court says "No" because there was "no delivery."

2. Does the giving of a credit on a ledger transfer intangible property rights, constituting a gift as provided under U. S. Code, Part 86, Gift Tax which law appears in part under (d) below?

3. Does a credit and acceptance of the same constitute a delivery of intangible property rights or must there be some physical delivery, if so what? The only reason given by defendant or the Courts below was that there was no completed gift because there was "no delivery."

4. Does a credit on a ledger, recognized by all concerned constitute an account stated as held by the Court of Appeals of New York State?

Appellant believes in this case (*Woolsey vs. U. S. A.*), the decision is contrary to the holding of the Court of Appeals of the State of New York as found in the case *Corr against Hoffman*, 256 N. Y. 254. The opinion in the *Corr* case states in part as follows:

> "An account stated is nothing more or less than a contract express or implied between the parties * * * an account stated is conclusive upon the parties unless fraud, mistake or other equitable considerations are shown which make it improper to be enforced."

5. Does the same question of physical delivery apply to a gift made by the discharge of an indebtedness as provided in Section 86-2 of the Tax Regulations as hereinafter quoted?

Based upon the above laws, Plaintiff-Appellant claims that the yearly credits of $3,000 to each child were completed gifts not subject to tax.

6. U. S. Code Part 86 Gift Tax, Section 86-10:

> "Except with respect to any gift of a future interest in property, the first $3,000 of gifts made to any one donee during the calendar year of 1943 or during any calendar year thereafter shall be excluded in determining the total amount of gifts for such calendar year."

The alleged errors in decision and holdings of the Trial and Appellate Court as claimed by Appellant are as follows:

1. In holding that some physical delivery was necessary to create an indebtedness by plaintiff to his daughters.

2. Refusal to hold that a gift can consist of intangible property rights.

3. In holding that credits in plaintiff's ledger did not convey or establish property rights.

4. In holding that credits in plaintiff's ledger did not place property rights beyond plaintiff's control and beyond his authority to change.

5. In holding that a credit in plaintiff's ledger did not constitute a completed gift.

6. In holding that to grant plaintiff the relief asked would make the gift tax statutes unenforceable.

(d) The U. S. laws relating to gift taxes, and in particular Section 2511, U. S. Tax Law. Federal Tax Regulation, Regulation 108, Sections 86-1 to 86-74 apply to this case.

Section 86-2 provides in part as follows:

> "'In general,' the statute imposes a tax whether the transfer is in trust or otherwise, whether the transfer is direct or indirect, or whether the property is real or personal, tangible or intangible."
>
> "Thus, for example, a taxable transfer May be effected by the *declaration* of a trust, the forgiveness of a debt, * * *"

A debt can legally be discharged orally or by a credit on a ledger without any physical delivery.

Transfer Reached. Declaration of Trust.

* * * "Inasmuch as the tax also applies to gifts indirectly made, all transactions whereby property or property rights or interest are gratuitously passed or conferred upon others, regardless of the means or device employed, constitute gifts subject to tax."

Section 86-3, paragraph 2, provides in part as follows:

"As to any property, or part thereof or interest therein, of which the donor has so parted with dominion and control as to leave to him no power to change the disposition thereof, whether for his own benefit or for the benefit of another, the gift is complete."

Section 86-50 provides in part as follows:

Addition to Tax for failure to file return.

"(a) For failure to file the return required by the Internal Revenue Code within the time prescribed or within any extension of time granted by the District Director, unless it is filed after such time and the failure is shown to have been due to a reasonable cause and not to be willful neglect," 5%-30 days 5% each 30 days thereafter not over 25%.

If the ledger credits constituted completed gifts of property rights gratuitously passed or conferred upon the daughters, no return was required.

(e) Plaintiff having practiced medicine at Hancock, New York, for many years and having been engaged in other business enterprises, desiring to provide security for his three daughters and their families and at the same time reduce his estate decided to give said daughters portions of his property. He understood, and correctly so,

that he could give each daughter $3,000 each year without any obligation to file a gift tax return or pay a gift tax. It is conceded that this was to be done partly for tax purposes which was a legitimate purpose, and to accomplish this purpose there would be no illegal act or wrong done. This constituted good business, particularly so since plaintiff had already been required to pay a considerable gift tax and penalties.

In order to accomplish his purpose plaintiff opened in his ledger a gift tax account and gave each daughter a credit of $3,000 each year from 1942 to 1950. This account was kept in his own handwriting but he was assisted by his secretary. He informed his daughters with reference to these credits and they accepted such credits as gifts from their father, their mother having died some years previous. In 1950, plaintiff transferred to his said daughters stocks consisting of Hancock Bank stock and stock of the Hancock Realty, Inc., sufficient to satisfy his indebtedness according to his account and then balance that account. The account was kept in the same ledger used for the accounts for the Hancock Realty, Inc., of which company his daughters were officers.

When the tax officials learned of the transfer of stocks in 1950, they reported the same to the government officers who assessed and collected a gift tax and penalties on the whole amount as gifts in the year 1950. Plaintiff paid the same under protest and later made application for a refund upon the ground that said assessment and penalties were illegal and unjust. Said application for refund was denied and the present action was brought to recover the amount of the taxes and assessments claimed to have been illegally collected. A complaint was served in November, 1954. The case was tried at Albany, New York, before Honorable James T. Foley, United States District Judge on June 16, 1955. A decision and judgment was rendered

dismissing the complaint which was docketed on October 1, 1955. Decision of the Court of Appeals was entered March 28, 1956.

Appellant claims that the gifts to his daughters consisted of yearly credits on his ledger. It was not a gift of stock or stocks. The stocks were transferred to satisfy and balance plaintiff's indebtedness as shown by his ledger account.

The daughters gave full value for the stocks when transferred, by permitting the ledger account to be balanced, cancelling donors indebtedness to them.

(f) Not applicable.

(g) United States Code Annotated—Title 28—Section 1331.

> "Federal question; amount in controversy. The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $3,000, exclusive of interest and costs, and arises under the Constitution, laws or treaties of the United States. June 25, 1948, c. 646, 62 Stat. 930."

(h) The Supreme Court should exercise its discretion and grant a review of this case for the following reasons:

1. The Court of Appeals for the Second Circuit has decided an important question or questions of law contrary to the holding of the Court of Appeals of the State of New York as found in the case of *Corr vs. Hoffman*, 256 N. Y. 254.

2. The decision of the U. S. Court of Appeals in this case relates to questions not heretofore definitely passed upon by the U. S. Supreme Court, viz.: The legal value of a ledger account and its binding effect on the parties involved. These questions are important questions of

Federal Law which should be settled by this Court. Appellant has found no case holding directly on the laws of bookkeeping neither defendant's attorneys nor the Courts below have cited any case directly deciding these questions. To constitute a gift there must be, of course, a delivery if the property is tangible, but plaintiff does not claim to have given stocks or securities, but gave credit on his ledger account and satisfied his account by transferring stocks and balancing his account. The whole matter was closed before the United States Revenue officials stepped in.

The credits on donor's ledger constituted delivery of intangible property rights.

3. The Courts have departed from the usual and accepted proceedings by saying nothing about the real issue, but simply said there was no completed gift because there was no delivery. The Courts held that no property rights were transferred. A ledger account represents property rights of an intangible nature of which there can be no physical delivery.

The Court of Appeals adopted the opinion of the Trial Court which included any error the Trial Court may have made. If the Supreme Court should find that the Trial Court was in error, the Appellate Court adopted such errors and the case should be reviewed and plaintiff-appellant granted judgment for the relief asked for in the Complaint.

The daughters gave and the plaintiff received full value for the securities transferred by the balancing of the gift tax ledger account, known and relied upon by all of the parties concerned.

It was an improper interpretation of the law for the Court to hold that the rights of a concededly honest person should be denied, because it might interfere with the

enforcement of the tax laws, as against some dishonest person. The Court did not explain how it could interfere and petitioner is unable to follow such reasoning.

(i) Copy of the Trial Court's opinion and findings are included in the petitioner's appendix, nine copies of which are filed with this petition. The printed appendix contains the whole record.

(j) Not applicable.

WHEREFORE petitioner prays for a review of the above case by the Supreme Court of the United States and after such review a reversal of the decision of the Trial Court as affirmed by the United States Court of Appeals for the Second Circuit together with such other and further relief as is just and equitable.

LESTER E. WOOLSEY,
Petitioner.

ROYAL D. WOOLSEY,
Attorney for Petitioner,
Office and Post Office Address,
Canastota, New York,

JAMES O. MOORE, JR.,
Genesee Building,
Buffalo, New York.

State of New York,
County of Delaware, ss:

LESTER E. WOOLSEY, being duly sworn, deposes and says that he resides at Hancock, Delaware County, New York. He has read the foregoing petition and knows the contents thereof, and the same is true to his own knowledge except as to matters therein stated upon information and belief and as to those he believes them to be true.

LESTER E. WOOLSEY.

Subscribed and sworn to before me this
17th day of May, 1956.
Frieda I. Chamberlain,
Notary Public, State of N. Y., Delaware Co. No. 18.
Commission Expires March 30, 1957.